REMARKS

The present remarks are in response to the Office Action dated March 13 2008, in which the Office Action issued a rejection of claims 1-35. In this response, the Applicant has made Amendments to the claims and has addressed the Examiner's objections. In view of the Amendments and Remarks submitted herewith, the Applicant respectfully requests that the pending claims be placed in a state of allowance. No new matter has been added.

A. 35 USC 112 Claim Rejection

The Examiner has rejected the claims 11 and 28 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the Examiner noted that claims 11 and 28 recite the limitation "said interactive games" and provides insufficient antecedent basis.

Applicant has amended the claims 11 and 28 and has removed the reference to "said" from the claims, thereby correcting the antecedent basis.

B. 35 USC 103(a) Claim Rejection

The Examiner rejected claims 1-35 under 35 USC 103(a) as being unpatentable over the same named inventor Luciano (US 6,368,214) hereinafter referred to as "LUCIANO '214," in view of Odom (US 6,581,935) referred to as "ODOM."

Applicant respectfully submits that the LUCIANO '214 should be disqualified as prior art because the invention at the time the invention was made was commonly assigned to Sierra Design Group and have the same named inventor. As stated by the MPEP:

> The burden of establishing that subject matter is disqualified as prior art is placed on applicant once the examiner has established a *prima facie* case of obviousness based on the subject matter. For example, the fact that the reference and the application have the same assignee is not, by itself, sufficient evidence to disqualify the prior art under 35 U.S.C. 103(c). There must be a statement that the common ownership was "at the time the invention was made." See MPEP (Rev. 6) 706.02(l)(1), p. 700-55.

The LUCIANO '214 patent having the named invention Robert A. Luciano was assigned to Sierra Design Group and the Execution Date of the Assignment was 11/02/2000 – the assignment is at Reel/Frame: 011384/0318. With respect to the instant case, a NOTICE OF RECORDATION OF ASSIGNMENT dated August 12, 2005 was received by the Applicant that stated the same assignor Robert A. Luciano, Jr. had assigned his rights to Sierra Design Group – see assignment at Reel/Frame: 016394/0226. Thus, Applicant respectfully submits that Applicant has overcome the Examiner's obviousness rejection by disqualifying the LUCIANO '214 reference.

It may be argued that the Examiner may respond with a double patenting rejection; and as such Applicant respectfully submits that the Examiner may consider a nonstatutory obviousness type double patenting rejection. As stated by the MPEP:

> A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not ***patentably distinct*** from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); and *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985). See MPEP (Rev. 5) 804 II(B)(1), p. 800-21.

Applicant respectfully submits that this was likely the Examiner's intended rejection because the LUCIANO '214 patent is cited as the primary reference and the Examiner proceeds to argue obviousness in view Odom. If so, the Applicant respectfully argues that there are significant differences between a rejection based on double patenting and a rejection based on 35 USC 103(a). See MPEP 804 III. More particularly, the MPEP states:

> One significant difference is that a double patenting rejection must rely on a comparison with the claims in an issued or to be issued patent, whereas an anticipation or obviousness rejection based on the same patent under 35 U.S.C. 102(e)/103(a) relies on a comparison with what is disclosed (whether or not claimed) in the same issued or to be issued patent. In a 35 U.S.C. 102(e)/103(a) rejection over a prior art patent, the reference patent is available for all that it fairly discloses to one of ordinary skill in the art, regardless of what is claimed. *In re Bowers*, 359 F.2d 886, 149 USPQ 570 (CCPA 1966). See MPEP (Rev. 5) 804 III, p. 800-22.

Applicant respectfully submits that if the Examiner were to make a nonstatutory obviousness type double patenting rejection, the Examiner must rely on a comparison of the claims in the LUCIANO '214 – which the Examiner has not done. However, if the Examiner were to analyze the LUCIANO '214 patent claims – the Examiner would realize the LUCIANO '214 claims are directed to a keno wagering game.

Applicant respectfully submits that the claims in the instant case are *patentably distinct* because the LUCIANO '214 claims are directed to a keno game and the pending claims are directed to a bingo game. Recall, that a nonstatutory obviousness-type double patenting rejection would NOT be appropriate when the claims are *patentably distinct* – as in the instant case.

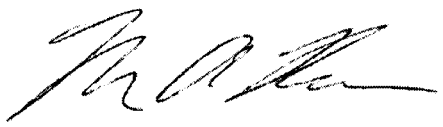
Applicant respectfully submits that LUCIANO '214 is inapplicable to the Examiner's 103(a) rejection because of the common inventorship and common assignment. Additionally, the Applicant respectfully submits that *arguendo* a nonstatutory obviousness type double patenting rejection would also be inappropriate because the LUCIANO '214 claims are *patentably distinct* from the pending claims.

Thus, Applicant respectfully submits that the claims are in a condition for allowance.

C. Conclusion

In view of all of the foregoing, claims 1-35 overcome the Office Action rejection herein and are now patentably distinct and in condition for allowance, which action is respectfully requested.

Respectfully Submitted;



Dated: June 13, 2008

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